

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND (NORTHERN DIVISION)

INTERNATIONAL PAINTERS AND ALLIED TRADES INDUSTRY PENSION FUND, et. al.)	Case No. 1:21-cv-03261-RDB
)	
Plaintiffs,)	
)	
v.)	
)	
JOE BARRETT ENTERPRISES, INC., a dissolved New York corporation dba BARRETT ENTERPRISES, et. al.)	
)	
Defendants.)	
)	

AMENDED JUDGMENT BY STIPULATION

IT IS HEREBY STIPULATED and AGREED (the "Stipulation") by and between the parties hereto that an Amended Judgment by Stipulation shall be entered in the within action in favor of Plaintiffs International Union of Painters and Allied Trades Industry Pension Fund et. al. (collectively "Plaintiffs" or "Pension Fund") and against Defendants Joe Barrett Enterprises, Inc., a dissolved New York Corporation dba Barrett Enterprises, Inc., and Tammy Barrett and Joseph Barrett, individuals as follows:

1. Defendants Joe Barrett Enterprises, Inc., a dissolved New York Corporation dba Barrett Enterprises, Inc. are signatory to and bound by the terms of a Collective Bargaining Agreement(s) ("Bargaining Agreement") with one or more local labor union(s) and/or district council(s) affiliated with the International Union of Painters and Allied Trades, AFL CIO, CLC. The Bargaining Agreement(s) is/are still in full force and effect.
2. Defendants Tammy Barrett and Joseph Barrett confirm that they are authorized to enter into this Stipulation on behalf of Defendants Joe Barrett Enterprises, Inc., a dissolved New York Corporation and dba Barrett Enterprises, Inc.
3. Defendants Tammy Barrett and Joseph Barrett confirm that they are

personally guaranteeing the amounts due herein. Defendant Joe Barrett Enterprises, Inc., a dissolved New York Corporation dba Barrett Enterprises, Inc. and Defendants Tammy Barrett and Joseph Barrett (hereinafter collectively "Defendants") consent to the Court's jurisdiction, as well as the use of a Magistrate Judge if necessary/required for any and all proceedings, including entry of judgment herein. Defendants further confirm that all successors in interest, assigns, and affiliated entities (including, but not limited to, parent or other controlling companies), and any companies with which Defendant Joe Barrett Enterprises, Inc., a dissolved New York Corporation dba Barrett Enterprises, Inc. joins or merges, if any, shall also be bound by the terms of this Stipulation as Guarantors. This shall include any additional entities in which Defendants Tammy Barrett and/or Joseph Barrett are officers, owners or possess any controlling ownership interest. All such entities shall specifically consent to the Court's jurisdiction, the use of a Magistrate Judge for all proceedings, and all other terms herein, in writing, at the time of any assignment, affiliation or purchase.

4. Judgment was entered in the within action on May 16, 2022 (Dkt #14). Since that time additional amounts have become due to Plaintiffs from Defendants. Defendants have requested a payment plan for all amounts due, including those set forth in the original May 16, 2022 Judgment. Accordingly, Plaintiffs and Defendants request that an Amended Judgment by Stipulation be entered in the within action, including all additional amounts that have come due.

5. Defendants are currently indebted to the Pension Fund as follows:

Original Judgment (Entered May 16, 2022; Dkt. #14):		
	Judgment Total:	\$303,393.71
Post Judgment Interest per §26 U.S.C. 6621 (3/29/22 through 10/4/22):		\$4,750.00
	Subtotal, Original Judgment:	\$308,143.71

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Additional Amounts Due:					
Work Month	Total Contributions	Unpaid Contributions	20% Liquidated Damages	Interest (through 10/4/22)	Subtotals
April, 2020 (HW) ¹	\$9,582.76	\$9,582.76	\$1,916.55	\$778.70	\$12,278.01
May, 2020 (HW)	\$8,891.84	\$8,891.84	\$1,778.37	\$684.81	\$11,355.02
June, 2020 (HW)	\$11,362.78	\$11,362.78	\$2,272.56	\$840.84	\$14,476.18
July, 2020 (HW)	\$12,839.64	\$12,839.64	\$2,567.93	\$917.42	\$16,324.99
August, 2020 (HW)	\$19,899.38	\$19,899.38	\$3,979.88	\$1,371.15	\$25,250.41
September, 2020 (HW)	\$18,599.97	\$18,599.97	\$3,719.99	\$1,235.76	\$23,555.72
October, 2020 (HW)	\$11,920.37	\$11,880.82	\$2,376.16	\$759.08	\$15,016.06
November, 2020 (HW)	\$7,595.28	\$7,570.08	\$1,514.02	\$464.98	\$9,549.08
December, 2020 (HW)	\$4,942.96	\$4,926.56	\$985.31	\$290.05	\$6,201.92
January, 2021 (HW)	\$1,928.96	\$1,928.96	\$385.79	\$108.67	\$2,423.42
January, 2021 (HW)	\$312.64	\$312.64	\$62.53	\$17.60	\$392.77
February, 2021 (HW)	\$482.24	\$482.24	\$96.45	\$26.07	\$604.76
February, 2021 (LW) ²	\$1,250.56	\$1,250.56	\$250.11	\$67.57	\$1,568.24
March, 2021 (HW)	\$482.24	\$450.58	\$90.12	\$23.20	\$563.90
March, 2021 (LW)	\$1,250.56	\$1,250.56	\$250.11	\$64.39	\$1,565.06
April, 2021(HW)	\$3,232.53	\$3,232.53	\$646.51	\$102.29	\$3,981.33
April, 2021(LW)	\$913.52	\$913.52	\$182.70	\$44.78	\$1,141.00
May, 2021(HW)	\$467.17	\$467.17	\$93.43	\$21.70	\$582.30
May, 2021(LW)	\$1,260.33	\$1,260.33	\$252.07	\$58.56	\$1,570.96
June, 2021(HW)	\$2,282.56	\$2,282.56	\$456.51	\$100.43	\$2,839.50
June, 2021(LW)	\$1,875.84	\$1,875.84	\$375.17	\$82.54	\$2,333.55
July, 2021(HW)	\$7,834.96	\$7,834.96	\$1,566.99	\$324.78	\$9,726.73
July, 2021(LW)	\$752.24	\$752.24	\$150.45	\$31.17	\$933.86
August, 2021 (HW)	\$13,625.11	\$13,625.11	\$2,725.02	\$530.08	\$16,880.21
September, 2021 (HW)	\$12,751.32	\$12,751.32	\$2,550.26	\$464.63	\$15,766.21
October, 2021 (HW)	\$11,557.40	\$11,557.40	\$2,311.48	\$391.69	\$14,260.57
October, 2021 (LW)	\$420.06	\$420.06	\$84.01	\$14.24	\$518.31
November, 2021 (HW)	\$13,828.87	\$13,828.87	\$2,765.77	\$434.57	\$17,029.21
November, 2021 (LW)	\$576.43	\$576.43	\$115.29	\$18.11	\$709.83
December, 2021 (HW)	\$16,349.52	\$16,349.52	\$3,269.90	\$472.13	\$20,091.55
December, 2021 (LW)	\$1,465.35	\$1,465.35	\$293.07	\$42.31	\$1,800.73
January, 2022 (HW)	\$125.76	\$125.76	\$25.15	\$59.68	\$210.59
January, 2022 (LW)	\$2,266.64	\$2,266.64	\$453.33	\$3.30	\$2,723.27
February, 2022 (HW)	\$1,509.12	\$1,509.12	\$301.82	\$36.26	\$1,847.20
February, 2022 (LW)	\$859.76	\$859.76	\$171.95	\$20.66	\$1,052.37
March, 2022 (HW)	\$1,383.36	\$1,383.36	\$276.67	\$29.45	\$1,689.48
March, 2022 (LW)	\$1,406.88	\$1,406.88	\$281.38	\$28.95	\$1,717.21
April, 2022 (HW)	\$503.04	\$503.04	\$100.61	\$8.88	\$612.53
April, 2022 (LW)	\$859.76	\$859.76	\$171.95	\$15.17	\$1,046.88
May, 2022 (LW)	\$1,571.20	\$1,571.20	\$314.24	\$22.38	\$1,907.82
June, 2022 (HW)	\$6,359.80	\$6,359.80	\$1,271.96	\$66.21	\$7,697.97
July, 2022 (HW)	\$3,940.03	\$3,940.03	\$788.01	\$24.29	\$4,752.33
July, 2022 (LW)	\$1,045.95	\$1,045.95	\$209.19	\$6.45	\$1,261.59

¹ HW references REG-1 "High Work"² LW references REG-2 "Low Work"

Additional Amounts Due:					
Work Month	Total Contributions	Unpaid Contributions	20% Liquidated Damages	Interest (through 10/4/22)	Subtotals
Subtotals:		\$222,253.88	\$44,450.78	\$11,105.98	\$277,810.64
			Attorneys' Fees (6/1/22 - 9/30/22)		\$1,926.00
				AMENDED JUDGMENT TOTAL:	\$587,880.35

REQUIREMENTS UNDER THE TERMS OF THIS STIPULATION

6. **Notice requirements** pursuant to the terms of this Stipulation are as follows:

- a) **Notices to Defendants:** Tammy Barrett, Barrett Enterprises, Inc., 3775 State Hwy 30 Amsterdam, NY 12010; email: jbarrett2@nycap.rr.com
- b) **Notices to Plaintiffs:** Michele R. Stafford, Tucker Arensberg LLP, 1098 Foster City Blvd, Suite 106 #700, Foster City, CA 94404; email: mstafford@tuckerlaw.com, copy to ecotterill@tuckerlaw.com

7. The requirements pursuant to the terms of this Stipulation are as follows:

a) **Monthly Payments:** Defendants shall pay the total amount of **\$451,713.18**, representing all of the amounts stated above, less *conditionally waived* liquidated damages in the amount of \$136,167.17 (\$91,716.39 included in the Original Judgment; \$44,450.78 for current amounts due).

i) Defendants have made an initial down payment in the amount of **\$10,000.00**, which was received on October 4, 2022.

ii) Payments in the amount of **\$10,000.00 per month** shall begin on November 25, 2022, and continue on or before the 25th day of each month thereafter **for a period of three (3) months**. Payment shall be made electronically, by ACH or Wire Transfer to the *IUPAT Combined Funds* account at the Northern Trust Company, 50 South LaSalle Street, Chicago, IL 6067, with the reference "Barrett Enterprises," to the ABA/Account numbers specified in the IUPAT Pension Fund Electronic Transfer Instructions, which Defendants acknowledge having received from Plaintiffs' counsel. Additional copies of these Instructions can be obtained from Michele R. Stafford upon request.

iii) Payments in the amount of **\$45,000.00 per month** shall begin on February 25, 2023, and continue on or before the 25th day of each month thereafter **for a period of nine (9) months, through and including October 25, 2023.** Payment shall be made electronically as described above.

iv) Payment in the amount of the **conditional judgment balance** shall be made on or before November 25, 2023. Payment shall be made electronically as described above. This payment shall include any additional amounts that have come due during the payment term.

v) Defendants shall have the right to increase the monthly payments at any time and there is no penalty for prepayment.

vi) Payments shall be applied first to interest, at the rate of 6% per annum in accordance with the Bargaining Agreement(s) and Trust Agreements and the current IRS interest rate. Interest shall begin to accrue on 10/5/22.

b) **Contributions:** Beginning with contributions due for hours worked by Defendants' employees during the month of **September, 2022** and for every month thereafter until this Judgment is satisfied, Defendants shall remain current in reporting and payment of contributions due to Plaintiffs under the terms of the Collective Bargaining Agreement(s) to which it is signatory

c) **Job Reports:** Beginning with the month of **September, 2022** and for every month thereafter, Defendants shall fully disclose all jobs on which they are working by providing Plaintiffs with fully completed job reports on the form attached hereto as *Exhibit A* via email to mstafford@tuckerlaw.com and ecotterill@tuckerlaw.com. Defendants' September 2022 job report shall be provided on or before October 31, 2022, and subsequent reports shall be provided on or before the 25th day of each month, beginning with Defendants' October 2022 report, due on or before November 25, 2022. Defendants may request a fillable job report from Michele R. Stafford. Upon request by Plaintiffs, Defendants shall also provide Plaintiffs with copies of Certified Payroll Reports.

d) **Audit:** Should the Trust Funds request an audit of Defendants' payroll records pursuant to the requirements of the Bargaining Agreement(s) and/or Trust Agreements, Defendants must contact the auditor within seven (7) days of receiving notice, and must schedule the audit.

i) In the event that amounts are found due to Plaintiffs as a result of the audit, Plaintiffs shall send a copy of the audit report and written demand for payment to Defendants. In the event that the audit findings are not contested, payment in full shall be delivered to Michele R. Stafford at the address provided above.

ii) In the event that Defendants dispute the audit findings, Defendants must provide the dispute in writing, with all supporting documentation, within ten days of the date of the demand. Defendants shall be notified as to whether revisions will be made to the audit. If revisions are not made, payment will be immediately due. If revisions are made, payment in full of the revised amount shall be immediately due.

iii) If Defendants are unable to make payment in full, Defendants may submit a request to add the amounts found due to this Stipulation. If the Stipulation is so revised, Defendants shall execute the Amended Judgment or Amendment to Judgment within ten days of receipt. Failure to execute the revised agreement shall constitute a default of the terms herein.

iv) Failure by Defendants to submit either payment in full or a request to add the amounts due to this Judgment within ten days of receipt shall constitute a default of the obligations under this agreement. All amounts found due on audit shall immediately become part of this Judgment.

e) **Fees:** Defendants shall pay all additional attorneys' fees and costs incurred through Satisfaction of Judgment, whether or not a default occurs.

8. In summary, Defendants shall deliver the following payments and documents to Plaintiffs, at the following locations, on or before the following delivery deadlines, until this Judgment Pursuant to Stipulation has been fully satisfied:

Required Submissions	Delivery deadlines	Delivery locations
Down payment in the amount of \$10,000.00 <i>Made payable to IUPAT Combined Funds</i>	N/A: payment made on October 4, 2022	Michele R. Stafford Tucker Arensberg LLP 1098 Foster City Blvd Suite 106 #700 Foster City, CA 94404
Stipulated payments in the amount of \$10,000.00 <i>to IUPAT Combined Funds</i>	25th day of each month (11/25/22 - 1/25/23)	ACH or Wire Transfer to: <u>Bank:</u> Northern Trust Company, 50 South LaSalle Street, Chicago, IL 60675
Stipulated payments in the amount of \$45,000.00 <i>to IUPAT Combined Funds</i>	25th day of each month (2/25/23 - 10/25/23)	<u>Account:</u> IUPAT Combined Funds <u>ABA/Account number:</u> See IUPAT Pension Fund Electronic Transfer Instructions
Stipulated payment in the amount of the Conditional Judgment Balance <i>to IUPAT Combined Funds</i>	11/25/23	<u>Reference:</u> Barrett Enterprises
Current contribution reports and payments	Timely, as required by the terms of Defendants' Collective Bargaining Agreement(s) (beginning with 9/22 hours)	As required by the terms of Defendants' Collective Bargaining Agreement(s); with copies via email to mstafford@tuckerlaw.com and ecotterill@tuckerlaw.com
Completed job reports (form attached as Exhibit A to Stipulation) and Certified Payroll (if requested)	10/31/22, for 9/22 hours; 25th day of each month (beginning with 11/25/22, for 10/22 hours)	Via email to mstafford@tuckerlaw.com Copy to: ecotterill@tuckerlaw.com

DEFAULTS UNDER THE TERMS OF THIS STIPULATION

9. If default occurs, Plaintiffs shall make a written demand to Defendants to cure said default ***within seven (7) days of the date of the notice from Plaintiffs***. In the event default is not cured within the required time frame, all amounts remaining due hereunder (after application of principal payments made, if any) shall be due and payable

on demand by Plaintiffs. These amounts shall include any conditionally waived liquidated damages, additional (current) contributions/liquidated damages/interest, plus interest on the declining balance and additional attorneys' fees and costs incurred herein.

10. Any unpaid or late-paid contributions, together with 20% liquidated damages and 6% per annum interest, shall become part of this Judgment. Plaintiffs reserve all rights available to collect any contributions and related amounts not included herein. This includes, but is not limited to, any amounts due pursuant to employee timecards or paystubs, by audit, or other means. Should Defendants fail to submit a report for any month, contributions shall be estimated pursuant to Pension Fund policy. Defendants specifically waive the defense of the doctrine *res judicata* as to any such additional amounts determined as due.

11. A Writ of Execution and/or other similar documents or orders may be obtained without further notice, in the amount of the unpaid balance plus any additional amounts due under the terms herein. Such Writ of Execution and/or other similar documents or orders may be obtained solely upon declaration by a duly authorized representative of Plaintiffs setting forth the balance due as of the date of default.

MISCELLANEOUS PROVISIONS

12. The above requirements remain in full force and effect regardless of whether or not Defendant Joe Barrett Enterprises dba Barrett Enterprises, Inc. has ongoing work, whether Defendant Joe Barrett Enterprises dba Barrett Enterprises, Inc.'s account with the Pension Fund is active, or whether Defendant Joe Barrett Enterprises dba Barrett Enterprises, Inc. is signatory to a Collective Bargaining Agreement. If, for any reason, Defendant Joe Barrett Enterprises dba Barrett Enterprises, Inc. has no work to report during a given month, Defendant Joe Barrett Enterprises dba Barrett Enterprises, Inc. shall submit the job report form (Exhibit A attached hereto) indicating that there are no current jobs. If Defendant Joe Barrett Enterprises dba Barrett Enterprises, Inc. has no contributions to report, Defendant Joe Barrett Enterprises dba Barrett Enterprises, Inc.

shall submit the applicable contribution report stating "no employees."

13. Payments made by joint check shall be endorsed on behalf of Defendants prior to submission, and may be applied toward Defendants' monthly stipulated payment, provided that the issuer of the joint check is not requesting a waiver/release in exchange for the payment. Joint checks for which a release is requested may not be applied toward Defendants' monthly stipulated payment, but shall be deducted from the total balance owed under this Stipulation, provided the payment is for contributions included in this Stipulation.

14. Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise Defendants as to the final amount due, including additional interest, any current contributions and related amounts, and all additional attorneys' fees and costs incurred by Plaintiffs, whether or not Defendants default herein. Any additional amounts due shall be paid in full with the final stipulated payment due on **November 25, 2023**.

15. The conditional waiver of liquidated damages shall be presented to the Delinquency Subcommittee for the Pension Fund and/or its authorized representative(s) for consideration only after all amounts due under the terms of this Stipulation are paid in full, and Defendants' account is otherwise current. If the waiver is granted, a Satisfaction of Judgment will be filed with the Court once all payments have cleared the bank. If the waiver is not granted, the liquidated damages will be immediately due. The waiver may be granted with further conditions, such as paying timely and remaining current for an additional period of time.

16. Defendants waive any notice of Entry of Judgment or of any Request for a Writ of Execution and/or other similar documents or orders, and expressly waive all rights to stay of execution and appeal.

17. Any failure on the part of Plaintiffs to take any action as provided herein in the event of any breach of the provisions of this Stipulation shall not be deemed a waiver of any subsequent breach.

18. The parties agree that any payments made pursuant to the terms of this Stipulated Judgment shall be deemed to have been made in the ordinary course of business as provided under 11 U.S.C. Section 547(c)(2) and shall not be claimed by Defendants as a preference under 11 U.S.C. Section 547 or otherwise.

19. Should any provisions of this Stipulation be declared or determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term, or provisions shall be deemed not to be part of this Stipulation.

20. This Stipulation is limited to the agreement between the parties with respect to the unpaid and delinquent contributions and related sums enumerated herein, owed by Defendants to Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any. Defendants acknowledge that Plaintiffs expressly reserve their right to pursue withdrawal liability claims, if any, against Defendants and control group members, as provided by Plaintiffs' Plan documents, the Trust Agreement(s) incorporated into the related Bargaining Agreements, and applicable laws and regulations.

21. This Stipulation contains all of the terms agreed to by the parties and no other agreements have been made. Any changes to this Stipulation shall be effective only if made in writing and signed by all parties hereto.

22. This Stipulation may be executed in any number of counterparts and by facsimile, each of which shall be deemed an original and all of which shall constitute the same instrument.

23. Defendants represent and warrant that they have had the opportunity to be or have been represented by counsel of their own choosing in connection with entering this Stipulation under the terms and conditions set forth herein, that they have read this Stipulation with care and are fully aware of and represent that they enter into this Stipulation voluntarily and without duress.

24. The parties agree that the Court shall retain jurisdiction of this matter until this Stipulated Judgment is satisfied.

DATED: November 15, 2022

Joseph Barrett Enterprises dba Barrett Enterprises, Inc.

By: /S/Joseph Barrett

Joseph Barrett / Tammy Barrett
Authorized Representative of Defendant
Joseph Barrett Enterprises dba Barrett
Enterprises, Inc.

DATED: November 15, 2022

Joseph Barrett

By: /S/Joseph Barrett

Individual Defendant/Guarantor

DATED: November 15, 2022

Tammy Barrett

By: /S/ Tammy Barrett

Individual Defendant/Guarantor

DATED: November 15, 2022

International Union of Painters and Allied Trades Pension Fund et. al.

By: /S/Terry Nelson

Terry Nelson, Trustee and Fiduciary

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over this matter.

DATED: November 16, 2022



UNITED STATES DISTRICT COURT
JUDGE

Exhibit A: JOB REPORT FORM

Completed Forms Due by the 25th of each month
 by email to mstafford@tuckerlaw.com; ecotterill@tuckerlaw.com

Employer: Joseph Barrett Enterprises dba Barrett Enterprises, Inc.
 Report for the month of _____, 20____

Project Name:			Public or Private? (Circle one)
Project Address:			
General Contractor:			
General Contractor Address:			
General Contractor Phone #:		Project Manager Name:	
Project Manager Phone #:		Project Manager email address:	
Contract #:		Contract Date:	
Total Contract Value:			
Work Start Date:		Work Completion Date:	
Project Bond #:		Surety:	

Project Name:			Public or Private? (Circle one)
Project Address:			
General Contractor:			
General Contractor Address:			
General Contractor Phone #:		Project Manager Name:	
Project Manager Phone #:		Project Manager email address:	
Contract #:		Contract Date:	
Total Contract Value:			
Work Start Date:		Work Completion Date:	
Project Bond #:		Surety:	

*****Attach additional sheets as necessary****

24. The parties agree that the Court shall retain jurisdiction of this matter until this Stipulated Judgment is satisfied.

DATED: November __, 2022

Joseph Barrett Enterprises dba Barrett Enterprises, Inc.

By: 

Joseph Barrett / Tammy Barrett
Authorized Representative of Defendant
Joseph Barrett Enterprises dba Barrett
Enterprises, Inc.

DATED: November __, 2022

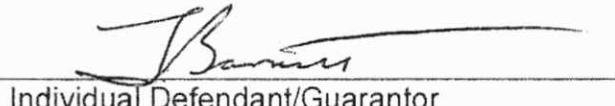
Joseph Barrett

By: 

Individual Defendant/Guarantor

DATED: November __, 2022

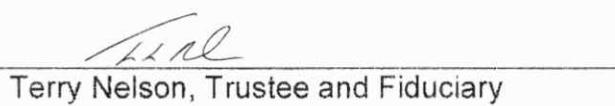
Tammy Barrett

By: 

Individual Defendant/Guarantor

DATED: November __, 2022

International Union of Painters and Allied Trades Pension Fund et. al.

By: 

Terry Nelson, Trustee and Fiduciary

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over this matter.

DATED: _____, 2022

UNITED STATES DISTRICT COURT
JUDGE